IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

THURSDAY, THE 18TH OCTOBER 2007 / 26TH ASWINA 1929

WP(C).No. 621 of 2007(Y)

PETITIONER:

SAILAJA E.V., AGED 35 YEARS,
W/O.K.ACHUTHAN MANIYANI,
'NAVA JEEVAN HIGH SCHOOL', PERADALA, P.O.PERADALA,
PIN- 671 551, KASARAGOD DISTRICT.

BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

RESPONDENTS:

1. THE STATE OF KERALA,
REPRESENTED BY THE PRINCIPAL SECRETARY TO
GOVERNMENT, GENERAL EDUCATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DEPUTY DIRECTOR OF EDUCATION,
CIVIL STATION, KASARAGOD,
P.O.VIDHYA NAGAR, KASARAGOD DISTRICT.

3. THE DISTRICT EDUCATIONAL OFFICER,
P.O.KASARAGOD, KASARAGOD DISTRICT.

4. SMT.P.SINDHU, HIGH SCHOOL ASSISTANT
(MALAYALAM), NAVA JEEVAN HIGH SCHOOL,
PERADALA, P.O. PERADALA, PIN- 671 551,
KASARAGOD DISTRICT.

BY ADV. SRI.SURESH KUMAR KODOTH
R1 TO R3 BY GOVERNMENT PLEADER SRI.T.T.MAHAMOOD.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 18/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

(WP(C) No. 621 OF 2007)

PETITIONER'S EXHIBITS:

Ext.P1: Copy of the appointment order dtd.10.11.2000.

Ext.P2: Copy of the appointment order dtd.30.10.2000.

Ext.P3: Copy of the decision reported in 2005(3) KLT 502 dtd.4.2.2005.

Ext.P4: Copy of the Argument note filed by the petitioner dtd.19.12.2005.

Ext.P5: Copy of the Govt. Order dtd.17.11.2006.

Ext.P6: Copy of the order dtd.9.11.99.

Ext.P6(a): Copy of the order dtd.27.8.2005 of R3.

-True Copy-

P.A.to Judge.

S. SIRI JAGAN, J.

W.P (C).NO. 621 OF 2007 - Y

Dated this the 18th day of October, 2007

J U D G M E N T

The petitioner was appointed as High School Assistant (Malayalam) in an additional vacancy which arose on 26.6.2000. Subsequently, a regular vacancy arose on 29.8.2000. The petitioner was entitled to be shifted to that post in view of Ext.P6. However, this was not done, instead the fourth respondent was appointed to that vacancy on 4.9.2000. The appointments were approved and salary was disbursed to both teachers. However, by Ext.P5 order, the petitioner was directed to refund the salary drawn in cash from 26.6.2000 and 30.11.2001 since as per the Government Orders in force, the amount has to be credited to the Provident Fund account in view of the situation prevailing on account of the ban against appointments. This would be applicable only to additional post and not regular post. According to the petitioner, if the petitioner had been

adjusted against a regular post and the fourth respondent had been appointed in the additional post, which was the correct procedure to be done going by Ext.P6, this contingency would not have arisen in respect of the petitioner and the fourth respondent would have become liable to refund the salary received by her from 4.9.2000 to 30.11.2001. The petitioner therefore seeks the following reliefs:-

> "a) call for the records leading to Exhibits P5 and P6(a) and quash the original of the same by the issue of a writ of certiorari or other appropriate writ or order;
> b) issue a writ of mandamus or other appropriate writ, order or direction commanding the respondents to retain the petitioner in service against the regular post arose on 29.8.2000;
> and
> c) pass such other order or direction which this Hon'ble Court may deem fit and proper to grant in the circumstances of the case;"

2. I am of opinion that insofar as the salary has already been disbursed to the petitioner and the fourth respondent, and for the same, they cannot be faulted, it is not now necessary to direct the petitioner to refund

the amount for crediting it in the Provident Fund. In any event, whether it is in the Provident Fund or in the hands of the petitioner, it is the petitioner's money.

3. In the above circumstances, I quash Ext.P5 to the extent of directing the petitioner to refund excess salary drawn in cash from 26.6.2000 to 30.11.2001 and declare that the salary paid to her in cash shall be treated as regular.

The writ petition is disposed of as above.

Sd/-

S. SIRI JAGAN,
Judge

Mbs/

S.SIRI JAGAN, J

W.P.(C) NO. OF 2001

J U D G M E N T

DATED: 07-09-2007